IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

ROBERT LEE DARDEN,)	
)	
Plaintiff,)	
v.)	CASE NO. 3:05-cv-274-F
)	(WO)
THE SMYRNA PENTECOSTAL FIRE)	
BAPTIZED HOLINESS CHURCH, INC.,	et al.,)	
)	
Defendants.)	

ORDER

This cause is now before the Court on the plaintiff's Notice of Appeal (Doc. #24) and a motion for leave to proceed on appeal *in forma pauperis* (Doc. #25), filed on June 23, 2005.

Title 28 U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken *in forma* pauperis if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous." Coppedge v. United States, 369 U.S. 438, 445 (1962). "The statute

¹ See 28 U.S.C. § 1915(e):

⁽²⁾ Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

⁽A) the allegation of poverty is untrue; or

⁽B) the action or appeal--

⁽i) is frivolous or malicious;

⁽ii) fails to state a claim on which relief may be granted; or

⁽iii) seeks monetary relief against a defendant who is immune from such relief.

provides that a court 'may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.'" *Attwood v. Singletary*, 105 F.3d 610, 613 (11th Cir. 1997) (citing 28 U.S.C. § 1915(d) (1996)).

This circuit has defined a frivolous appeal under section 1915(d) as being one "without arguable merit." Harris v. Menendez, 817 F.2d 737, 739 (11th Cir.1987)(quoting Watson v. Ault, 525 F.2d 886, 892 (5th Cir.1976)). "Arguable means capable of being convincingly argued." Moreland v. Wharton, 899 F.2d 1168, 1170 (11th Cir.1990) (per curiam) (quoting Menendez, 817 F.2d at 740 n. 5); see Clark, 915 F.2d at 639 ("A lawsuit [under section 1915(d)] is frivolous if the 'plaintiff's realistic chances of ultimate success are slight." (quoting Moreland, 899 F.2d at 1170)).

Sun v. Forrester, 939 F.2d 924, 925 (11th Cir. 1991), reh'g denied, 503 U.S. 999 (1992). See also Weeks v. Jones, 100 F.3d 124, 127 (11th Cir. 1996) (stating that "Factual allegations are frivolous for purpose of [28 U.S.C.] § 1915(d) when they are 'clearly baseless;' legal theories are frivolous when they are 'indisputably meritless.'") (citations omitted).

Applying the foregoing standard, this Court is of the opinion that the plaintiff's appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith.

Accordingly, it is ORDERED that the plaintiff's motion to proceed on appeal *informa* pauperis is DENIED and that the appeal in this cause is certified, pursuant to 28 U.S.C.A. § 1915(a), as not taken in good faith.

DONE this 29th day of June, 2005.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

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